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Patent No. RE39540 :
Sokolov et al. :
Issue Date: April 3, 2007 :
Application No. 10/691,432 : DECISION ON PETITION
Filed: October 23, 2003 :
Attorney Docket No. P8297R :

This is a decision on the PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c)) filed October 20, 2010.

The petition is **DISMISSED**.

The reissued patent issued January 22, 2002. This reissue patent is based on an original non-reissue application, which issued on October 23, 2001.

37 CFR 1.362(h) provides that:

the periods specified in §§ 1.362 (d) and (e) with respect to a reissue application, including a continuing reissue application thereof, are counted from the date of grant of the original non-reissue application on which the reissued patent is based.

Accordingly, the grace period for paying the first maintenance fee provided in 37 CFR 1.362(e) expired at midnight on October 23, 2005. This petition was filed almost five years later.

37 CFR 1.378(c) Any petition to accept an unintentionally delayed payment of a maintenance fee filed under paragraph (a) of this section must be filed within twenty-four months after the six-month grace period provided in § 1.362(e) and must include:

- (1) the required maintenance fee set forth in §1.20(e)-(g);
- (2) the surcharge set forth in § 1.20(i)(2); and
- (3) a statement that the delay in payment of the maintenance fee was unintentional.

This petition was not filed within twenty-four months after the actual expiration of the six-month grace period at midnight on October 24, 2005. Accordingly, the instant petition cannot be granted under 37 CFR 1.378(c).

As the twenty-four month period has expired, patentee may only obtain reinstatement of this patent via the provisions of 37 CFR 1.378(b). Under such provisions, patentee must show that the entire delay in paying the maintenance fees was unavoidable.

In view thereof, the petition is dismissed.

Any request for reconsideration of this decision must be filed within **TWO MONTHS** of the mailing date of this decision. This period is not extendable under the provisions of 37 CFR 1.136(a). Any such petition for reconsideration must be accompanied by the \$400 petition fee set forth in § 1.17(h). After decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director. Accordingly, on request for reconsideration, it is extremely important the petitioner supply any and all relevant information and documentation in order to meet his burden of showing unintentional delay.

If on request for reconsideration, the delayed payment of the maintenance fee is not accepted, then the maintenance fee and the surcharge set forth in §1.20(i) are subject to refund following the decision on the petition for reconsideration, or after the expiration of the time for filing such a petition for reconsideration, if none is filed. (Petitioner may request a refund of the maintenance fee and surcharge by writing to the Office of Finance, Refund Section, Commissioner for Patents, Washington DC 20231. A copy of the last decision rendered should accompany the request for refund).

Alternatively, patentee may file a petition under 37 CFR 1.378(b). The filing of such a petition should not be intentionally delayed, as the entire delay will be considered in determining whether patentee has shown that the delay in paying

the maintenance fee was unavoidable within the meaning of 37 CFR 1.378(b).

The address set forth on the petition, filed by a registered practitioner, is different than the correspondence address of record. A courtesy copy of this decision is being mailed to the address on the petition. However, all future correspondence will be mailed to the address of record until such time as a proper change of correspondence address (patent) is filed.


Further correspondence with respect to this decision should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By fax: (571) 273-8300
 ATTN: Office of Petitions

By hand: Customer Service Window
 Randolph Building
 401 Dulany Street
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Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3219.


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